Ho Kam Seong v Arab Malaysian Securities Sdn Bhd

HIGH COURT (KUALA LUMPUR) — CIVIL APPEAL NO R2–12–368 OF 1999
FAIZA TAMBY CHIK J
24 JULY 2000

Securities *— Stockbroker — Negligence — Invalid share certificates — Irregularities on the face of the certificates — Failure to accord with memorandum and articles of company — No direct confirmation from company as to invalidity of certificates — Whether defence of laches, acquiescence and delay apply*

Pahang Investment Public Ltd Co ('PIPLC') — formerly known as Pahang Consolidated Co Ltd, with a change of name to the Pahang Consolidated Public Ltd Co in 1982 and change of name to its present name on 15 October 1984 — was at all material time a company incorporated in England. It had registrar and transfer offices in Kuala Lumpur and Singapore. PIPLC was at all material time listed in the London, Kuala Lumpur and Singapore Stock Exchanges. The respondents were at all material time members of the KLSE. In October 1985, the appellant purchased through the respondents PIPLC's shares ('the shares'). The appellant later discovered that the shares were invalid. The company was subsequently wound up. The appellant submitted that the respondents were negligent in the purchase of the shares in that they did not discharge their duty of care although there were patent defects in the share certificates which they received and delivered to the appellant. The appellant submitted that as a result of the respondents' negligence, the appellant suffered loss and damage in that the shares were worthless and invalid and could never be registered even if the company was not wound up. The appellant called PW5, the President of Malaysian Investors Association ('MIA'), to give evidence to explain certain documents exhibited and to explain why he told the appellant that his certificates did not appear to be valid. PW5 had perused millions of the company certificates as President of MIA, was a member of the board of the company's liquidator in Malaysia and had been briefed by the Singapore Commercial Affairs Department officers on the irregularities of the certificates. The appellant claimed for the purchase price that he paid for the invalid shares and the loss of interest on the sum. The sessions court dismissed the appellant's claim on the ground that there was no direct evidence of the invalidity of the share certificates. The appellant appealed.

Held, allowing the appeal:

(1) Although there was no direct evidence in the sense that there was no official confirmation from the company itself on the invalidity of the certificates, there was sufficient evidence from PW5 read with the documents adduced as well as the law under ss 100, 158

and 164 of the Companies Act 1965, all of which indicated that there was a very strong likelihood that the certificates were not valid (see p 648C–D).

(2) Being members of the KLSE and being stockbrokers, the respondents must have in their possession the KLSE's official publication. Otherwise they had failed in their duty as stockbrokers to have all necessary information in the conduct of their business. The respondents' failure to do some checking up once they were put on notice was a serious breach of their duty of care to the appellant (see p 649G–H).

(3) The evidence before the court as adduced by the appellant clearly showed that there were enough pointers on the face of the certificates to show that they did not accord with the M & A of Pahang Investments and that the respondents did not discharge their duty of care as stockbrokers when they accepted the certificates and delivered them to the appellant. The loss and damage suffered by the appellant was solely caused by the negligence of the respondents. Even though the company was wound up, the fact remain that the appellant's loss was caused not by the winding up but by the fact that the certificates were invalid at the point in time when they were delivered to him (see p 664G–H).

(4) The totality of the evidence called by the appellant and the documents adduced showed that the appellant had discharged his burden of proof that there were very glaring irregularities in the certificates together with the KLSE's press statement which showed that there was a very strong likelihood that the share certificates were not valid. In the face of the unchallenged evidence that the company, its directors, registrars and offices could not be traced, a fact supported by the KLSE's own press statement, the judge was totally unjustified in drawing an adverse inference against the appellant for not calling the Singapore Registrar. The judge overlooked the fact that the appellant did not call PW5 as an expert but as an informed, knowledgeable person. The judge abdicated in her duty to come to her own conclusion based on the evidence before her which were overwhelming in pointing to the invalidity of the certificates and that she had sufficient guidance from the company's art 96 and ss 100, 158 and 164 of the Companies Act 1965 without having to rely on the verification of the company's registrar, especially as evidence showed it was impossible to get such verification from the company's registrar (see p 665C–F).

(5) When the appellant adduced evidence from PW5 and in the form of various exhibits, the appellant had proved on a preponderance of probabilities that the respondents had not been reasonably diligent. The court was satisfied that the appellant had adequately discharged his burden of proof by

showing proof on a preponderance of probabilities and that there was a breach of duty of care and skill on the part of the respondents (see pp 668B, 669B).

(6) The defence of laches, acquiescence and delay did not apply in the appellant's case. The trust and confidence that the appellant had in his stockbrokers and in the KLSE caused him to be inactive and not to bother with checking on the actual position until the case circulated by MIA alerted him to do something. Further, under s 115 of the Evidence Act 1950, because the KLSE had told the public to wait for the outcome of police investigation, the respondents, being members of KLSE, were estopped from alleging laches, acquiescence and delay (see pp 660I–661A, B–C).

[Bahasa Malaysia summary

Pahang Investment Public Ltd Co ('PIPLC') — yang dahulunya dikenali sebagai Pahang Consolidated Co Ltd, yang ditukar nama kepada Pahang Consolidated Public Ltd Co pada tahun 1982 dan kemudian kepada nama kini pada 15 Oktober 1984 — pada semua masa material merupakan sebuah syarikat yang diperbadankan di England. Ia mempunyai pejabat pendaftar dan pejabat pemindahan di Kuala Lumpur dan Singapura. Pada semua masa material, PIPLC disenaraikan pada Bursa Saham London, Kuala Lumpur dan Singapura. Pada semua masa material, penentang-penentang merupakan ahli-ahli Bursa Saham Kuala Lumpur ('BSKL'). Pada bulan Oktober 1985, perayu telah membeli saham-saham PIPLC ('saham tersebut') menerusi penentang-penentang. Perayu kemudiannya mendapati bahawa saham tersebut tidak sah. Syarikat tersebut seterusnya digulungkan. Perayu berhujah bahawa penentang-penentang telah bertindak cuai dalam membeli saham tersebut dalam ertikata mereka tidak melaksanakan kewajipan berhati-hati mereka walaupun terdapat ketaksempurnaan yang nyata dalam sijil saham yang diterima oleh mereka dan diserahkan kepada perayu. Perayu berhujah bahawa akibat kecuaian penentang-penentang, beliau telah mengalami kerugian dan kerosakan dalam ertikata saham tersebut adalah tidak bernilai dan tidak sah serta tidak boleh didaftarkan sekalipun syarikat tersebut tidak digulungkan. Perayu telah memanggil PW5, Presiden Persatuan Pelabur-Pelabur Malaysia ('PPM'), untuk memberi keterangan bagi menjelaskan dokumen tertentu yang dipamerkan dan untuk menjelaskan mengapa beliau memberitahu perayu bahawa sijil-sijilnya tidak kelihatan sah. PW5 telah memeriksa dengan teliti berjuta-juta salinan sijil syarikat sebagai Presiden PPM, merupakan seorang ahli lembaga penyelesai syarikat di Malaysia dan telah diberikan arahan oleh pegawai-pegawai Pejabat Hal Ehwal Perdagangan Singapura atas luar aturan sijil-sijil tersebut. Perayu membuat tuntutan untuk harga belian yang dibayarnya untuk saham tidak sah tersebut dan untuk kehilangan faedah atas jumlah tersebut. Mahkamah sesyen menolak tuntutan

perayu berlandaskan alasan bahawa tiada keterangan terus mengenai ketidaksahan saham tersebut. Perayu membuat rayuan. A

Diputuskan, membenarkan rayuan tersebut:

(1) Walaupun tiada keterangan langsung dalam ertikata tiada pengesahan sah daripada syarikat tersebut mengenai ketidaksahan sijil-sijil tersebut, terdapat keterangan yang mencukupi daripada PW5 dibaca bersama dokumen yang dikemukakan serta undang-undang di bawah ss 100, 158 dan 164 Akta Syarikat 1965, yang semuanya menunjukkan bahawa besar kemungkinan saham-saham tersebut adalah tak sah (lihat ms 648C–D). B C

(2) Sebagai ahli BSKL dan broker saham, penentang-penentang mestilah memiliki penerbitan rasmi BSKL. Jika tidak, mereka telah gagal dalam kewajipan mereka sebagai broker saham untuk memiliki segala maklumat yang perlu dalam pengendalian perniagaan mereka. Kegagalan penentang-penentang untuk mengikuti perkembangan sebaik sahaja menerima notis merupakan suatu kemungkiran serius kewajipan berhati-hati terhadap perayu (lihat ms 649G–H). D

(3) Keterangan di hadapan mahkamah seperti yang dikemukakan oleh perayu jelas menunjukkan bahawa terdapat hujah yang mencukupi pada sijil-sijil untuk menunjukkan bahawa mereka tidak menurut memorandum dan perkara-perkara persatuan Pahang Investments dan bahawa penentang-penentang tidak melaksanakan kewajipan berhati-hati mereka sebagai broker saham apabila mereka menerima sijil tersebut dan menyerahkannya kepada perayu. Kerugian dan kerosakan yang ditanggung oleh perayu semata-mata adalah disebabkan oleh kecuaian penentang-penentang. Walaupun syarikat tersebut telah digulung, hakikatnya kerugian perayu tidak disebabkan oleh penggulungan tetapi hakikat bahawa sijil-sijil tersebut tidak sah pada tahap masa apabila mereka diserahkan kepadanya (lihat ms 664G–H). E F G

(4) Keseluruhan keterangan yang dipanggil oleh perayu dan dokumen-dokumen yang dikemukakan menunjukkan bahawa perayu telah melepaskan beban membuktinya bahawa terdapat luar aturan yang amat ketara dalam sijil-sijil bersama dengan pernyataan akhbar BSKL yang menunjukkan bahawa besar kemungkinan sijil-sijil saham tersebut tidak sah. Dihadapi dengan keterangan yang tidak dicabar bahawa syarikat tersebut, pengarah-pengarah, pendaftar dan pegawai-pegawai tidak boleh djumpai, suatu kenyataan yang disokong oleh pernyataan akhbar BSKL sendiri, hakim tidak berjustifikasi dalam membuat inferens bertentangan terhadap perayu kerana tidak memanggil Pendaftar Singapura. Hakim tidak mengendahkan hakikat bahawa perayu tidak memanggil PW5 sebagai seorang saksi tetapi sebagai seorang yang bermaklumat dan berpengetahuan. Hakim terkhilaf H I

dalam kewajipannya untuk membuat kesimpulan sendiri berdasarkan keterangan di hadapannya yang begitu jelas dalam menunjukkan ketidaksahan sijil-sijil tersebut dan bahawa beliau telah menerima panduan yang memadai daripada perkara 96 syarikat tersebut dan ss 100, 158 dan 164 Akta Syarikat 1965 tanpa keperluan untuk bergantung pada pengesahan pendaftar syarikat tersebut, terutamanya apabila keterangan menunjukkan adalah mustahil untuk memperolehi pengesahan sedemikian daripada pendaftar syarikat (lihat ms 665C–F).

(5) Apabila perayu mengemukakan keterangan daripada PW5 dan dalam bentuk pelbagai ekshibit, perayu telah membuktikan atas suatu imbangan kebarangkalian bahawa penentang-penentang tidak bertindak dengan ketekunan munsabah. Mahkamah puas hati bahawa perayu telah melepaskan beban membuktinya dengan secukupnya dengan menunjukkan bukti atas imbangan kebarangkalian dan bahawa kemungkiran telah berlaku dalam kewajipan berhati-hati dan kemahiran pihak penentang-penentang (lihat ms 668B, 669B).

(6) Pembelaan 'laches', persetujuan dan kelewatan tidak terpakai dalam kes perayu. Kepercayaan dan keyakinan perayu dalam broker sahamnya dan dalam BSKL menyebabkan beliau tidak giat dan tidak memerhatikan kedudukan sebenar sehingga kes yang diedarkan oleh PPM mendorong beliau untuk melakukan sesuatu. Seterusnya, di bawah s 115 Akta Keterangan 1950, memandangkan BSKL telah meminta masyarakat awam supaya menunggu keputusan siasatan polis, penentang-penentang, sebagai ahli BSKL, diestop daripada mengatakan 'laches', persetujuan dan kelewatan (lihat ms 660I–661A, B–C).]

Notes

For a case case on negligence of stockbroker, see 11 *Mallal's Digest* (4th Ed, 1996 Reissue) para 791.

Cases referred to

Alfred Templeton & Ors v Low Yat Holdings Sdn Bhd & Anor [1989] 2 MLJ 202 (refd)

Elderkin v Merrill Lynch (1977) 80 DLR (3d) 313

Fry v Smellie [1912] 3 KB 282 (refd)

Max Hilckes v Lee Choon Guan (1912) 1 MC 17 (refd)

McPhail & Co (Ipoh) Ltd v P & O Banking Corp (1931) SSLR 157 (refd)

Neilson v James (1882) 9 QBD 546 (refd)

Neogh Soo Oh & Ors v G Rethinasamy [1984] 1 MLJ 126 (refd)

Ortigosa v Brown Janson & Co 38 LT 384 (refd)

Saw Seng Kee v Nadzri & Ng Securities Sdn Bhd [1996] 2 MLJ 238 (refd)

Legislation referred to

Civil Law Act 1956 s 11
Companies Act 1965 ss 100, 158, 164
Companies Act 1988 (Cap 50) ss 123, 190 [Sing]
Contracts Act 1950 s 164
Evidence Act 1950 s 115
Limitations Act 1953 s 6
Securities Industry Act 1983 ss 5, 6

Appeal from: Summons No 52–5531 of 1991 (Sessions Court, Kuala Lumpur)

SY Chew (*SY Chew & Co*) for the appellant/plaintiff.
Philip Choong (*Philip Choong & Co*) for the respondent/defendant.

Faiza Tamby Chik J: Briefly the facts are as follows: Pahang Investment Public Ltd Co ('PIPLC') (formerly known as Pahang Consolidated Co Ltd, with a change of name to the Pahang Consolidated Public Ltd Co on 10 February 1982 and change of name to its present name on 15 October 1984) was at all material times a company incorporated in England. The Malaysian Registrar and transfer office was at all material times at 11th Floor, Bangunan Hong Kong Bank, 2, Leboh Ampang, 50100 Kuala Lumpur. The Singapore Registrar and transfer office was at all material times at M/s AP Management Services (Pte) Ltd, 29–16, International Plaza, Anson Road, Singapore 0207. The registered address and Registrar of PIPLC is set out in P20 and P21 at pp 290–291 of the appeal record. PIPLC was at all material times listed in the London, Kuala Lumpur and Singapore Stock Exchanges. The respondent/defendant (formerly known as Kris Securities Sdn Bhd) was at all material times and is still a member of the KLSE. The second third party, third third party, fourth third party and fifth third party were at all material times members of the KLSE. On 2 October 1985 and 9 October 1985 the appellant purchased through the respondent 5,000 shares of PIPLC at RM0.75 per share and 44,000 shares of PIPLC at RM0.66 per share respectively (the shares and duly executed transfers are hereinafter called 'the said shares'). The said shares together with share transfers are produced as exh P6 at pp 152–249 of the appeal record. The contract notes and delivery notes of the said shares are set out in exhs D2, D3, D4 and D5 and pp 150–151 of the appeal record. The said shares were purchased by the respondent on behalf of the appellant via SCAN, the clearing house of KLSE. The said shares were delivered by the third party respondent to SCAN and by SCAN to the respondent. The particulars of the said shares delivered by the second third party, third third party, fourth third party and fifth third party to SCAN and from SCAN to the respondent are set out in exh D22 at pp 292–295 of the appeal record. The evidence of DW6 on exh D22 is at p 125A paras D–E. The said shares sold and delivered by the second third party, third third party, fourth third party and fifth third party to SCAN are set out in exhs D22 and D23, D22 is produced at pp 292–295 of the appeal record and D23 is produced at pp 296 of the appeal record.

A The issues in this appeal are as follows:

(1) whether PW5, the President of Malaysian Investors Association ('MIA') is the proper person to verify the validity of the said shares;

(2) whether the said shares are invalid shares of PIPLC on the basis of the testimony of PW5 on the alleged irregularities in the share B certificates;

(3) whether the Registrar of PIPLC and/or the official receiver of PIPLC in Singapore are the appropriate authority to verify on the validity of the said shares issued by the Registrar of PIPLC in Singapore;

(4) whether the appellant had taken adequate steps to obtain the C verification from the Registrar and/or the official receiver of PIPLC on the validity of the said shares;

(5) whether the Registrar of PIPLC in Singapore was authorized to issue new shares of PIPLC and whether the approval of Capital Issue Committee ('CIC') in Malaysia was required in respect of issue of new D shares by the Registrar of PIPLC in Singapore; and

(6) whether the onus of proof is on the appellant to establish that the said shares were not valid shares of PIPLC was on a preponderance of probabilities.

The appellant relied on the expertise of the respondents whose business was E that of stockbrokers when he asked them to buy the shares in question for him. The appellant submitted that the respondents were negligent in the purchase of the shares in question in that they did not discharge their duty of care although there were patent (obvious) defects in the share certificates which they received and delivered to the appellant. It is the duty of the respondents to exercise all reasonable care, skill, diligence and competence F as stockbrokers in the purchase of the shares and to take all reasonable and proper care that the said shares were valid and transferable and/or proper and valid transfers of the same could be effected in favour of the appellant if he wished. The appellant submitted that as a result of the respondents' negligence, the appellant suffered loss and damage in that the said shares G were worthless and invalid and could never be registered even if the company was not wound up. The appellant's claim was based on invalid certificates. He was not alleging forgery, only that the certificates were issued in an unauthorized manner. The burden of proof is a civil burden of proof ie he must prove it on a preponderance of probabilities. The loss to the appellant was the purchase price that he paid for the invalid shares and H the loss of interests on the said sum as from the date after the last contract note dated 9 October 1985. In the appellant's submission in the court below dated 7 October 1998 (p 374 of the appeal record), the date was mistakenly stated as 25 October 1985 which was the date of exh D5. However D5 was not a contract note but the respondents' delivery receipt dated 25 October 1985. In fact, the appellant's evidence at p 71, para E of the appeal record I stated that the contract notes were dated from 2 October 1985 to 9 October 1985 as stated in the contract notes. The contract notes were D2, D3, D4 shown at pp 150–151 of the appeal record.

The question here is whether there was any direct evidence of the invalidity of the share certificates. The 'direct' evidence the sessions court judge wanted apparently must have been some confirmation from the company itself or from some official body acceptable to the court. But the company was already wound up. SP3 (the official liquidator) would be unable to say so as shown by her evidence at p 66, para E to p 67, para A when asked if she could say if the share certificates at p 55 of B (p 204 of the appeal record) was similar to the company's share certificate that she had seen. None of the company's officers can be found (see P8 at p 251 of the appeal record). The Singapore Registrar's office was closed (see the evidence of SP5 at p 103, paras A–B of the appeal record). Earlier on, SP5 had also said the company had no office in Singapore, only a Registrar's office (see p 94, paras B–C and p 113, para E to p 113, para A of the appeal record). It is observed here that there was no direct evidence only in the sense that there was no official confirmation from the company itself on the invalidity of the certificates but there was sufficient evidence from SP5 read with the documents adduced and the evidence of SP2, SP3, SP6 and SP7 as well as the law under the Companies Act 1965 ('the Act'), ss 100, 158 and 164, all of which indicated that there was a very strong likelihood that the certificates were not valid. This is due to the fact that although the respondents were supposed to purchase PIPLC shares (see the respondents' contract notes in exhs D2, D3, D4 at pp 150–151 of the appeal record which refer to 'Pahang Investment' under the column 'Securities') they in fact delivered 42 share certificates together with signed blank transfers (exh P10 (1–44) at pp 5–92 of Ikatan B) which show that they were 'PIPLC' shares. Exhibits P20 and P21 (pp 290–291 of the appeal record) are pp 1192 and 1095 respectively of the official publication of the *Annual Companies Handbooks 1986 and 1985* respectively of the Kuala Lumpur Stock Exchange ('KLSE'). These refer to the PIPLC and show that the Pahang Consolidated Co Ltd changed its name to the Pahang Consolidated Public Ltd Co on 10 February 1982 and 'to its present form' (ie PIPLC) on 15 October 1984. The shares were all bought in 1985, that was at the time when the correct name of the company was PIPLC. Yet when the respondents received the 42 share certificates in exh P6 showing the name 'Pahang Consolidated' instead of PIPLC they apparently assumed the certificates were in order and delivered them to the appellant. In fact as soon as they received the said certificates and saw the name of the company on the share certificates, they were put on notice that there was something wrong with them and I am of the view that they should have investigated before they proceeded further with the transaction. They failed to do so. If the respondents had investigated the name of the company, they would have read P21 (the *1985 KLSE Handbook*) and found the following:

(a) that the company's name was changed to The Pahang Consolidated Public Ltd Co with effect from 10 February 1982 and to PIPLC on 15 October 1984;

(b) the last issue of new shares was in 1980 (see under 'Changes in Ordinary Paid Up Capital'). This meant that any share certificates from 1981 onwards could not be certificates prepared on an 'issue' of

capital but must be certificates prepared when the original shareholder sold and transferred the shares to the buyer. For easy identification, I will call these 'transfer certificates'. Before 10 February 1982, but after 1980, such transfer certificates should bear the name 'The Pahang Consolidated Co Bhd' as shown in exh P1 which is a copy of the M & A produced by SP2 (the Registry of Companies officer). Reading the evidence of SP2 at pp 64–66 of the appeal record and SP3 (Official Liquidator) at pp 66–67 of the appeal record, it is clear that both these witnesses were referring to PIPLC. At p 67, para C, SP3 confirmed the company's M & A were issued by Nik Hussain, Ibrahim Tan & Abdullah, the only Malaysian solicitors listed under 'Solicitors' in exhs P20 and P21 (pp 290–291 of the appeal record); and

(c) there is something wrong with the name of the company as shown on the share certificates delivered by the respondents to the appellant. The certificates at pp 166 and 168 were both dated 3 August 1984 and should bear the name 'The Pahang Consolidated Public Ltd Co' but instead bear the name 'The Pahang Consolidated Co Ltd'. The certificates from pp 170–225 bore dates between 25 September 1984 and 12 October 1984 ie before the company's name was changed to PIPLC. However, the sale to the appellant being in October 1985, it begs the question: Why did the certificates not bear the name 'PIPLC'? If there was a reasonable answer to explain this, the respondents could have given evidence but no evidence was adduced at all. An adverse inference should be invoked against them. On the other hand, SP5 at p 94, para E of the appeal record had said that the share certificates after 15 October 1984 should carry the name of PIPLC. It is noted that the respondents did not call any witness to contradict SP5 on this point.

In the respondents' reply submission at p 37 of the appeal record at para 2.2, the respondents had submitted that notwithstanding the change in name of the company to PIPLC on 15 October 1984, the share certificates previously issued would remain in the previous name of Pahang Consolidated. However they had not called any evidence to confirm this. Therefore I conclude that the respondents' submission was not substantiated by evidence adduced in court.

Being members of the KLSE and being stockbrokers, the respondents must have in their possession the KLSE's official publication from which exh P21 was extracted. If they did not, I am of the view that they should have this, otherwise they have further failed in their duty as stockbrokers to have all necessary information in the conduct of their business. And if they had read exh P21 which they should have, they would know when they received exh P6 that there was something wrong with the share certificates in exh P6. The respondents 'failure to do some checking up once they were put on notice is a serious breach of their duty of care to the appellant. This being a civil case, the appellant burden of proof is to show a preponderance of probabilities. After careful perusal of the documentary evidence in this appeal, I come to the conclusion that the appellant has proved on a

preponderance of probabilities that the Singapore register share certificates in P6 are not valid because they did not comply with ss 100 and 158 of the Act, Malaysia and art 96 of PIPLC. This is so because it is the Malaysian Companies Act which is relevant because this is a Malaysian company with its head office in Kuala Lumpur and a branch office in Singapore according to P20 and P21. In particular the Singapore Companies Act, Cap 50 (1988 Ed similar to 1985 Ed) ss 123 and 190 state provisions similar to the Malaysian Companies Act ss 100 and 158 state on the details which must be stated on a share certificate. PIPLC's art 96 as shown in exh P1 (p 146 of the appeal record) states that every instrument to which the company seal shall be affixed shall be signed by a director and countersigned by the secretary or by a second director or by some other person appointed by the directors. The persons described after the word 'countersigned' in fact refer to countersignatories. Article 96 means that there must always be two signatories to witness the affixing of the seal. In fact exh P6 shows that none of the certificates except seven certificates on pp 152, 154, 156, 158, 160, 162 and 164 of the appeal record delivered to the appellant had the seal affixed in the proper manner. The said seven certificates are Malaysian register certificates while the rest appear to be Singapore register certificates. Even if the round chop of the Registrar, AP Management Service Pte Ltd, on the Singapore certificates can be said to be a signature, this is insufficient as under the company's art 96, there must be two signatures. The respondents should have noted this anomaly in the certificates but they failed to do so despite their duty and expertise as stockbrokers. Again it is P1 which should be read to see if the share certificates in P6 complied with the articles of association. The share certificates in P6 not including pp 152, 154, 156, 158, 160, 162 and 164 of the appeal record show that this had not been complied with. The respondents had not given evidence to dispute exh P1. They did not produce any other M & A to show that just a signature on top of a chop was sufficient. The invalid certificates, P6(15) to P6(98) at pp 166–249 of the appeal record all show a signature on top of a chop. The respondents chose not to call any evidence at all (see p 125J, para D of the appeal record.) The Singapore register certificates in P6 delivered by the respondents which did not show the correct name of the company, PIPLC were supposed to be bought for the appellant.

KLSE's own press releases (P9 on p 252 of the appeal record and P8 on p 251 of the appeal record) and SP5's evidence corroborate circumstances showing irregularities in the shares of PIPLC. As to the issue of whether PW5 (President of MIA) was the proper person to verify the validity of the shares, the appellant called PW5 to give evidence to explain certain documents exhibited and to explain why he told the appellant that his certificates do not appear to be valid. In the documents referred by the respondent, both the KLSE and the Stock Exchange of Singapore ('SES') had advised the public to do something which was either impossible or useless. The KLSE had told the public to get the Registrar or the authorities to confirm the shares were forged, to file claims with the liquidator of the company, and to wait for the outcome of police investigation (p 252 of the

appeal record). In fact, the evidence shows that the Registrar and officers of the company cannot be found, and the police investigation was not on invalid shares and was not completed. As regards filing claims with the liquidator it is noted that the judgment of the sessions court judge never mentioned that the appellant should have checked with the liquidator. Under cross-examination, PW5 said he was a member of the liquidator's board (p 101, paras A–B of the appeal record) and that he was not asked to examine the scripts because the liquidators were involved in disposal of assets, not in the forgery of scripts. By this, it is meant that the liquidator's office concerned itself with disposal of assets and not with verification of the share certificates. Since he had advised the appellant that his certificates were invalid and since he was a member of the liquidator's board, one could conclude that he must have known it was a futile exercise for the appellant to check with the liquidator. It must be noted that the act of negligence (purchase and delivery of invalid share certificates) occurred as at date of purchase and delivery of the certificates to the appellant ie 1985 and not in 1987, the year in which the winding-up order was made. Failure to do something at a date later than the date when the act of negligence occurred cannot exonerate the respondent from negligence liability. Also the liquidator (PW3) was asked to look at the certificate at p 55 of Ikatan B (p 204 of the appeal record) and although she had seen similar certificates in her records, she said she could not say if they were similar to the certificate at p 204 of the appeal record. However, she did positively identify the relevant M & A and said that art 96 in P1 is the same as art 96 in her copy of the M & A. If that is so, the court can conclude that even if the appellant had checked with the liquidator (PW3), it was very probable that she would say his certificates were not valid because the common seal of the company was not properly affixed. Therefore, checking with the liquidator would be a futile exercise. In the instant case, the court has to decide whether the respondent was negligent as at date of purchase and delivery of the certificates and not as at the date of the winding-up order or subsequent to the winding-up order. To answer this question, the court must consider only the facts available in 1985 and not in 1987. In the circumstances, I find the respondent liable for negligence, the appellant's cause of action was deemed to accrue as from the date of the act of negligence and under s 6 of the Limitations Act 1953 the limitation period begins from the date the cause of action accrued. It is observed that the SES told the appellant to check with the Registrar and/or the official receiver of PIPLC (see p 258 of the appeal record). Since there was no evidence at all of any liquidator being appointed in Singapore, the SES must be referring to the Malaysian liquidator (PW3). This was consistent with the fact that there was only one company, therefore there was only one liquidator. The Registrar that the SES referred to could be the Malaysian Registrar or the Singapore Registrar. But evidence already shows that neither can be found.

Referring to the KLSE press release dated 7 September 1987 (P8 at p 251 of the appeal record) at p 116 of the appeal record, SP6 (Ayub: KLSE witness) confirmed that this press release was from KLSE. He was referred

to the second last para of P8 which stated that attempts to contact officers of PIPLC had failed and he said he had no reason to doubt the accuracy of this para (see p 116, para B of the appeal record). The appellant said in his evidence at p 68, para B of the appeal record that upon reading P8, he got the impression that he would not be able to trace the officers even if he tried. At p 73, para B of the appeal record, he said soon after he bought the shares, the shares went into suspension and the company was undergoing liquidation and the Directors and Registrar were not to be traced. He also could not locate the company. SP5's evidence at p 82, para B to p 83, para A of the appeal record shows he was called by the Singapore Commercial Affairs Department ('CAD') alerted about the invalidity of the company's shares. He had several meetings with CAD officers and they briefed him about this company and the validity of shares after which he concluded that there were irregularities in the certificates. At p 85, paras A–B of the appeal record, he said the Vice President of his Association (MIA) was in London and took back a lot of records such as slides and microfilm concerning the company from the official company house in London, ie the Registry of Companies. SP5 was referred to P7 (KLSE press release dated 11 April 1988 at p 250 of the appeal record) where the KLSE questioned SP7's locus standi in the verification of the invalid certificates reported in the press (see p 90, para E of the appeal record). He said at p 91, para A of the appeal record that MIA had been accepted by the government, Ministry of Finance and recently by the NEAC (National Economic Action Council). At p 82, para D of the appeal record he said that he personally had handled the company's share certificates of up to a value of 17m (at p 100, para C of the appeal record he said seven million pounds worth of share scripts which took him several weeks to examine) and he gave information on these to the Singapore CAD. I would point out that P7 contradicts P8 (p 251 of the appeal record). In P8 the KLSE admitted that it had been informed by a director of PIPLC that excess shares were being issued in the company and a police report would be lodged by him and in P7 (p 250 of the appeal record) the KLSE advised the public that to-date, there was no official statement that there were shares in PIPLC which were found to be forged shares. Although it was true there was no official statement, in a scenario where P8 said attempts to contact officers of the company had failed, it must be noted that a statement from a director was official enough. The evidence of SP5 on MIA's investigations into the share certificates had not been challenged or disputed by the respondents as they opted not to give any evidence at all (see p 125J, para D of the appeal record). Evidence shows that PIPLC was issuing invalid shares after 1980. It should be noted that all the Singapore register certificates were issued from August 1984 to June 1985 (see P6 at pp 166–249 of the appeal record). At p 85, para D of the appeal record, SP5 referred to exh P16 (p 261 of the appeal record) which he wrote on 9 August 1989 to the Capital Issues Committee ('CIC') of the Ministry of Finance asking if PIPLC had applied for approval of issue of additional capital after 1980. The year 1980 was mentioned because according to P21 (*KLSE Handbook* at p 291 of the appeal record) under 'Capital' the last year of issue of capital (shares) was 1980. SP5 received a

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reply from CIC stating that no approval had been given and no application had been made (see exh P17 at p 262 of the appeal record). On this point, it was also supported by the evidence of SP7 from CIC (Cheah Kong Lee) at p 122 of the appeal record where he confirmed the said evidence and stated that if no approval was given by the CIC for issue of additional capital, such issue will be invalid. (On the functions of the CIC, see ss 5 and 6 of the Securities Industry Act 1983). I am of the opinion that SP7's and SP5's evidence read with P21, P15 and P17 clearly prove the patent (obvious) invalidity of the certificates. It is observed that the appellant called SP5 not as an expert witness within the meaning of the Evidence Act 1950 but as a witness who had first-hand information on matters relevant to the case, in particular why he wrote to the appellant (who was a member of MIA: see p 82, para A of the appeal record) stating that his certificates were invalid. His letter to the appellant dated 6 November 1989 is exh P10 (p 253 of the appeal record). He was also called so that he could give evidence in relation to P10 on p 253 of the appeal record, P16 on p 261 of the appeal record and P17 on p 262 of the appeal record and the invalid share certificates in P6 and also on the valid shares certificates in P6 (1–14) at pp 152–165 of the appeal record. A summary of SP5's evidence on the invalid certificates as stated at pp 83–89, 102–106, 109–110, 111 para E to 112 para A, 113 para B is as follows:

(i) index of members missing: p 87 para B to p 88 para A of the appeal record;

(ii) signatures of director and secretary under art 96 missing: p 84 para A of the appeal record;

(iii) registered office 'Hallam Street' wrongly stated as 'Hallam': p 83 para E and p 88 para C of the appeal record;

(iv) no stamp duty paid on certificate: At the relevant time, stamp duty was payable: p 99 paras C–D of the appeal record; and

(v) by comparison with P6(5) at p 156 of the appeal record, no transfer or allotment number: p 83 paras C–D of the appeal record.

At p 102, para B of the appeal record, he referred to the certificates at pp 152–165: P6 (1–14) of the appeal record and said these appear to be valid certificates. He said at p 109 paras A–E of the appeal record that the certificate P6 (13) at p 164 of the appeal record was valid although the name was wrong because it had other valid features. At p 109, para D of the appeal record he said the certificates from p 16 of the appeal record onwards should have the company's new name ie PIPLC. The court can see from exh P6 (1–14) at pp 152–165 of the appeal record what a patently (obviously) valid certificate looks like. At p 87, paras B–C, SP5 said the certificates at pp 158, 260, 162 of the appeal record have the index of members indicated as A126 and here the account number and the index of members number was the same. These three certificates refer to the same shareholder, ABC Nominess Sdn Bhd. I must stress here that the respondent's duty as stockbrokers to check the validity of share certificates coming into their hands for delivery to the appellant was all the more

important when we see from SP6's evidence that even the KLSE's SCAN would not know if the certificates were valid or not (see p 125C, para C of the appeal record). If the KLSE cannot help and, as claimed by the respondents, the stockbrokers were not duty-bound to this leaves the public at too much risk, and I think this is an unfair position which should not be condoned by the courts of this country. Although the appellant never sent the certificates for registration into his name he had already explained why. At p 72, paras A–C of the appeal record he said he did not register them because normally he would keep them for a while before he decided to register and that before CDS came into existence, registration used to take a few weeks to a few months. At p 76, para D of the appeal record, he said he could not register them because soon after he bought them, the company went into suspension and the Registrar and Directors were under police investigation. This practice of keeping the certificate and transfer form is mentioned in Philip N Pillai's *Sourcebook of Singapore & Malaysian Company Law* (2nd Ed, 1975) where at p 672 of his book he quoted the case of *Max Hilckes v Lee Choon Guan* (1912) 1 MC 17 on the subject of blank transfers and at p 673 in the second para after reference to the case *Ortigosa v Brown Janson & Co* 38 LT 384, the learned judge stated:

> The possession of the certificates and the blank transfers appear then to me to give the claimant an equitable interest which he could at any time turn into a legal interest (ie the legal right to call upon the company to register the transfer) by filling in his name as transferee.

And at p 674 of Philip N Pillai's book quoting the case of *McPhail & Co (Ipoh) Ltd v P & O Banking Corp* (1931) SSLR 157, reference is made to Farwell LJ's judgment from *Fry v Smellie* [1912] 3 KB 282 at p 294 of the said English case stating:

> I can only say that the certificates and a blank transfer are in everyday use as securities for raising money, and that every man who lends money to A on documents which show a title in B is of course put on inquiry.

In the instant case SP5 definitely said the certificates were not valid. He had said this in his letter of 6 November 1989 to the appellant (P10 at p 253 of the appeal record) and he had said so in court (pp 81–114 of the appeal record). The sessions court judge had said that the appellant's own witness (SP6) had said the appellant should contact the Singapore Registrar of PIPLC ie AP Management Services Pte Ltd to confirm the validity of the shares. In fact, SP6 had said both the Malaysian Registrar and the Singapore Registry would be the correct persons to verify the validity of the certificates (see p 125C, para E of the appeal record). This answer can be expected as he also said that there was only one company as shown in P20 and P21, the head office being in Kuala Lumpur and the branch office being in Singapore (see p 125E, para D of the appeal record). Again, P9 (dated 11 March 1988) seems to contradict KLSE's other press release (P8) dated 7 September 1987 or at least created alarm regarding the shares. In P9, the KLSE said there was no official statement by the Registrar of PIPLC on forged shares. In P8, the KLSE said it had been informed by a Director of PIPLC in March 1987 that excess shares were being issued in the company

A and a police report would be lodged by him. Although there was no official confirmation of forged shares the report of excess shares already hinted of invalidity. The appellant had said he could not locate the company soon after he bought the shares and that the Directors and Registrar could not be traced (see p 73, para B of the appeal record). KLSE press release (P8 on p 251 of the appeal record) at the second last para shows the Directors, officers or Registrar of PIPLC could not be traced. SP5 had also said he conducted a search on the share register in Singapore but it was closed and no longer in existence (see p 103, para B of the appeal record). In other words what he meant was that the Registrar or his office in Singapore could not be found. The sessions court judge over emphasized SP6's evidence that the appellant should contact the company's Registrar ie AP Management Services Pte Ltd in Singapore to confirm the validity of the certificates and by doing so, the learned judge gave no weight at all to the other aspects of SP6's evidence and the evidence of the other witnesses and the documents adduced. The other aspects of SP6's evidence is that confirmation at p 116, paras B–C of the appeal record of KLSE press release at pp 251–252 of the appeal record (P8, P9). His evidence at p 117, para E, p 118 paras A–D, p 125E paras D–E to p 125F para A on *KLSE Handbook 1985*, p 1095 (P21 at p 291 of the appeal record). In insisting that the appellant should call the Singapore Registrar, the learned judge overlooked the fact that the branch register in the branch office in Singapore and the register in the head office in Kuala Lumpur had the same information and that SP5 had given evidence that the Singapore Registrar's office in Singapore had been closed and no longer in existence and that the KLSE's own press statement dated 7 September 1987 (P8) showed that the Directors, officers or Registrar of the company could not be contracted and that these facts were never challenged by the respondent. In insisting on calling the Singapore Registrar the court was committing the same mistake that KLSE did in its Members Circular No 3140 of 1989 (P7 on p 250 of the appeal record) advising its members to request clients to furnish confirmation of validity from the Singapore authority. Apparently this mistake was based on the fact that the certificates were from the Singapore register. The appellant had sufficiently explained why he failed to contact the Registrar namely that he knew of the contents of P8 and that soon after he purchased the shares, the company's shares were suspended and the directors and Registrar could not be traced and he could not find out the whereabouts of the company and there was no opposing evidence from the respondent to show that in fact the company could be contacted (see p 69 paras B–D, p 76 paras D–E and p 73 paras A–C of the appeal record). The press statement (P8) of the KLSE of which the respondents are members, showed that the company, its directors and Registrar could not be traced (see P8 on p 251 of the appeal record).

The learned judge should have accepted the evidence of SP5 even though the appellant did not call him as an expert within the definition under the Evidence Act 1950 because the appellant had called him as President of the MIA and of which the appellant is a member and he had advised the appellant on the features of the certificates which tended to

show that they were invalid, and the learned judge should have given due weight to SP's evidence, although not that of an expert, as it was the evidence of an informed person who had met with officers of the Commercial Affairs Department in Singapore who had been investigating the company and who briefed him on the irregularities in the certificates and also in view of the fact that he is a member of the board of the liquidator of the company in Malaysia. He had explained in detail his involvement in MIA regarding these shares and how he and MIA were able to know so much about how to detect the invalidity of the share certificates including going to London to get information from the official Company House in London (the equivalent of the ROC in Malaysia, see pp 82–85 of the appeal record). In p 89, paras A–B, he referred to a circular he sent to members regarding Dr Cheah Swee Fah's case where he referred to invalid shares. At p 101, paras A–B of the appeal record, SP5 said even the police wrote to his association for co-operation and that he is also a member of the board of the liquidator of the company. The irregularities in the certificates were supported by a reading of art 96 of the company's own M & A (exh P1) and the Companies Act ss 100, 158 and 164. The learned judge could see from exh P6(1) to (14) at pp 152–165 of the appeal record what valid certificates look like and these had different features from the invalid certificates in the other pages of P6. In finding that SP7's evidence was not relevant, the learned judge ignored the fact that the company's branch register in Singapore would have exactly the same shares and particulars as that stated in the register in the company's head office in Kuala Lumpur as required under s 164 of the Act and the learned judge had a totally erroneous impression that the Registrar in Singapore would be involved in an issue of shares which would have nothing to do with the Registrar in Malaysia, a situation which is not possible as there is only one company with Registrar's offices in Malaysia and Singapore and only one head office ie in Kuala Lumpur as shown in exhs P20 and P21 at pp 290–291 of the appeal record. This was admitted by the KLSE witness, SP6, at p 125E, para D. Under re-examination at p 124, para D of the appeal record, SP7 (Cheah Kong Lee) was asked the question:

> If a company has a register of its shares kept outside Malaysia but the shares are issued in Malaysia, does Capital Issues Committee have jurisdiction over other shares?

'Issued' in this question was not related to the issue of certificates. In other words, the capital was issued in Malaysia but certificates could be issued in Singapore as well as in Malaysia in accordance with the company's M & A. And that there can only be one M & A for the company ie P1 at pp 126–149 of the appeal record. The learned judge's finding of facts was flawed because she was confused by the evidence of SP2, SP3, SP5, SP6 and SP7. This was because she had overlooked the law relating to companies and share certificates under the Act. SP5's evidence at pp 92–94 of the appeal record on the entity of PIPLC and Pahang Consolidated may be confusing but it only goes to show that these were all these factors which were confusing and should have put the stockbrokers on notice.

As to the issue of whether the said shares were invalid shares of PIPLC on the basis of the testimony of PW5 on the alleged irregularities in the share certificates, it is observed that PW5's evidence on the features of the certificates which show invalidity is substantially consistent. Of the seven certificates deemed valid by him, he can be faulted only on one certificate ie the one on p 164 issued on 10 April 1985. This certificate had the name 'The Pahang Consolidated Public Ltd Co' whereas it should be PIPLC. However, to allow this one point to defeat the appellant's submissions on the certificate is like saying the appellant must prove a perfect specimen of an invalid certificate. The appellant never alleged that the invalid certificates must have all the anomalies mentioned by PW5 before they can be deemed invalid. I am of the opinion that if a certificate had several of the stated anomalies it would suffice to prove it was invalid. As regards the certificate which had one signature (p 154 of the appeal record) the so-called 'one signature' was in fact a facsimile signature. The *Chambers Concise Dictionary* at p 370 defines a facsimile as 'an exact copy for eg of handwriting a coin etc'. At p 102, para B, P6(5) was referred by PW5 as having a facsimile signature. But if one compare P6(5) with P6(7), one will find that in fact P6(5) had part of the signature section missing because of something inadvertently covering that part in the photocopying process. The signatures were similar in both certificates. It is obvious from PW5's evidence that he said the valid certificates had certain transfer or allotment numbers and index of numbers on them whereas the invalid certificates did not have these numbers (see pp 83C, 87B–88C, 94E and 109A–E). It is observed that a scrutiny of the original certificates will show these numbers printed at the back of seven of the certificates. However, the photocopies of the certificates in the appeal record did not include the back of the certificates.

As to the issues of whether the Registrar of PIPLC and/or the official receiver of PIPLC in Singapore were the appropriate authority to verify on the validity of the said shares issued by the Registrar of PIPLC in Singapore and whether the appellant had taken adequate steps to obtain the verification from the Registrar and/or the official receiver of PIPLC on the validity of the said shares it is noteworthy that it was not compulsory to check with the Registrar in Singapore as the Malaysian Registrar would have the same records in view of s 164 of the Act. It is observed that the respondent had not bothered to reply on s 164 or on the whereabouts of both the Registrars. I am of the opinion that if the court upholds the respondent's argument on the point about the Registrars, this means if a public company is involved in forgery of shares and its Registrar absconds, and its shareholders claim their certificates are forged, they can never bring any action in court because they will never be able to get the Registrar of the company to verify their certificates are forged. I strongly feel that it is not a situation which should be condoned by any court which is concerned with justice. The respondent tried to discredit the appellant on his evidence regarding his letter dated 13 August 1991 (P11 at p 254 of the appeal record). Under cross-examination he admitted that he had not checked with the share Registrar (AP Management Services Ptd Ltd in Singapore)

although in his letter he had said he did. In the circumstances of the instant case I come to the conclusion that this lie in his letter is not so important as to cast doubt on the rest of his evidence.

As to the issue of whether the Registrar of PIPLC in Singapore was authorized to issue new shares of PIPLC and whether the approval of CIC in Malaysia was required in respect of issue of new shares by the Registrar of PIPLC in Singapore, it must be noted here that the respondent had not replied to the appellant's submissions under the Act that there was only one company listed in several countries as shown in P21 (p 291 of the appeal record) and also the respondent had not replied to the appellant's submission that share certificates in the Singapore register relate to issue of shares by one company whose head office was in Malaysia and therefore the CIC had a say on the certificates whether they were found in the Malaysian or Singapore register. Further the respondent had not replied to the appellants' submission under s 164 of the Act that the head office register in Malaysia had the same information as the branch register in Singapore. The fact that PW7 from CIC cannot verify the validity of the certificates in question was only to be expected as he was only familiar with CIC duties and CIC officers were surely not concerned with verification of the share certificates of companies who apply for CIC approval under the relevant Act. The certificates at pp 152, 154, 156, 158, 160, 162 and 164 of the appeal record show that they all have some allotment or transfer numbers at the bottom (below the sentence beginning with 'NB–') for example No 18118 at p 154, SP 411 at pp 156, 158, 160 and 162 and No 56034 at p 164 of the appeal record. PW5 had said at p 83C–D that p 7 of Ikatan B (p 156 of the appeal record had the transfer or allotment number 'SP 411' and (at p 103A of the appeal record) that the certificates at pp 7–100 did not have the SP number. However, it is obvious what was referred to was from pp 17–100. This was because the witness had already said the seven certificates from pp 3–16 were valid. Pages 3–16 in Ikatan B are pp 152–165 of the appeal record. Pages 17–100 in Ikatan B are pp 166–249 of the appeal record. At p 110A–B, PW5 said SP was used in most parts of the world and in other countries they would use the words which had the same meaning as 'splitting'. The allotment or transfer numbers on the seven certificates indicated that they refer to shares transferred from the original shareholder to another since the date of issue of the first certificate. These seven certificates are called 'transfer certificates'. In other words, they were issued on or before 1980 to the original shareholder and when he sold and the transfer was registered by the new shareholder, the new certificate issued to the new shareholder had the date when the transfer was registered. This explained why these certificates were dated after 1980. In other words, these shares were originally issued on or before 1980 but when there were transfers to subsequent shareholders after 1980, the dates of the new transfer certificates followed the dates the transfer were registered. It is obvious that the explanation can be given only as regards certificates which had transfer numbers as indicated in the said seven certificates.

As to the issue of whether the onus of proof is on the appellant to establish that the said shares were not valid shares of PIPLC, the appellant

A has to prove it on a preponderance of probabilities. I take it for granted that the respondent was in total agreement that the appellant's burden of proof was to prove his case on a preponderance of probabilities as no submission had been advanced by the respondent on this burden of proof. After a careful perusal of the oral and documentary evidence in the instant case I come to the conclusion that the appellant had discharged his burden of B proof for the following reasons:

(i) the CIC witness (PW7) had testified that the company in question had no CIC approval to issue share capital (which was not the same as issue of certificates) after 1980;

C (ii) all the certificates from pp 166–248 of the appeal record (the invalid certificates) were dated after 1980;

(iii) as there are no SP or transfer numbers on these certificates, the likelihood is that these certificates were the original certificates at date of issue of capital (as opposed to issue of certificates). Therefore they were not valid because there was no CIC approval to issue capital after D 1980;

(iv) all the invalid certificates showed the common seal of the company was not properly affixed in accordance with P1;

(v) fourteen certificates out of the 42 certificates delivered to the appellant showed the company name was obviously wrong. The two certificates E on pp 266–168 were dated 3 August 1984 and bore the name 'The Pahang Consolidated Co Ltd' when the name should be 'The Pahang Consolidated Public Ltd Co' (see P21 on p 291 of the appeal record). The 12 certificates on pp 226, 228, 230, 232, 234, 236, 238, 240, 242, 244, 246 and 248 were all dated after 15 October 1984 and bore F the name 'The Pahang Consolidated Public Ltd Co' when the name should be 'The Pahang Investment Public Ltd Co'. Therefore, for these 14 certificates out of the 42 certificates the company's name was obviously wrong in addition to the other irregularities. As regards the remaining 28 certificates, although the company's name appear correct as at date of issue of the certificates, there were other G irregularities as highlighted hereinbefore;

(vi) the remaining 28 certificates showed other irregularities although the company's name appeared correct at date of issue of the certificates; and

(vii) the respondent produced no evidence to contradict or dispute the H irregularities referred to by PW5.

The respondents' alternative ground of defence in para 9 of the defence at p 21 of the appeal record is that the appellant's claim against the respondents was misconceived in law and should be made against the third party brokering firms mentioned in para 6 of the defence. This amounted I to saying that the respondents were acting as agent of the appellant and his remedy was against the various stockbrokering firms which sold the said shares to him on behalf of their clients. I think this is a very flimsy argument.

If one looks at the contract notes (D2, D3, D4) at pp 150–151 of the appeal record, one can see that there was no mention of any third party brokers on them. There was even no evidence whether the appellant knew the third party's name or not! In any case, I am of the view that the respondents, whether acting as agent or not, were purchasing shares on behalf of the appellant and like all agents they must exercise due care. Section 164 of the Contracts Act 1950 clearly states that if an agent is negligent in the conduct of business on behalf of his principal thereby causing loss to the principal, he must make good the loss to the principal. Illustration (b) of the section in fact refers to the liability of a broker who acts in a manner not in keeping with the custom of the trade. In the appellant's case, it is observed that the respondent as broker agent had been negligent in delivering shares whose certificates patently show that there was some irregularity in the issue of the share certificates.

With reference to the respondent's ground of laches, acquiescence and delay (see para 11 of the defence at p 22 of the appeal record) the appellant stated in his amended reply (paras 8–8A at pp 29–30 of the appeal record) that before 6 November 1989, the KLSE had given a statement that only the Registrar or the relevant authority could verify the falsity or forgery of the company shares and this caused the appellant to believe that it also applied to invalid shares bought by him. After the KLSE statement, the appellant took time to try but failed to get confirmation from the company and the relevant authority and after that in the end he was forced to take action in 1991. It is observed that there were no submissions on this by the respondents at the sessions court hearing. The KLSE statement was the press release dated 11 April 1988 at p 252 of the appeal record (P9). P9 shows that the appellant like all the other investors in the market had been told by KLSE that there was a police investigation pending and while this was pending he and the others were advised not to do anything until police investigation was completed. This resulted in the appellant not doing anything until he heard from MIA about court cases including action by one Dr Cheah. Eventually the appellant decided not to wait any longer as he felt too much time had passed and also there was press information about such cases. This was why he filed his case only in 1991. Therefore, I am of the opinion that the defence of laches, acquiescence and delay did not apply in the appellant's case (see the evidence of the appellant at p 69, paras C–D of the appeal record). The KLSE is a statutory body created by the government with the objectives of regulating trading in the stock market and also of protecting investors. The respondents acting as agents of the appellant are also members of the KLSE. If the KLSE press release (P9 at p 252 of the appeal record) resulted in the appellant's inaction, the special relationship between the parties concerned must surely be taken into account. There was no evidence that the KLSE gave another press release to the public to say that the police investigation had been completed or what the outcome was. In fact, by the evidence of ASP Aziz Bulat (SP1) the only police investigation going on about PIPLC did not involve forged shares and was still going on (see pp 63–64 of the appeal record). I view that the trust and confidence that the appellant had in his stockbrokers and in the

KLSE caused him to be inactive and not to bother with checking on the actual position until the case circulated by MIA alerted him to do something. In the instant case, the respondents gave no evidence about whether they in fact made any efforts to check on the validity of share certificates before they delivered them to the appellant. According to SP5, in 1983 there was a lot of publicity concerning this company, there was a lot of write-up in the press about the mismanagement of the company and that the mismanagement had something to do with the share certificates (see p 82, paras B–C of the appeal record). Another reason is that the appellant purchased the shares in 1985 and did not sue till 1991. Under the Evidence Act 1950 s 115, because the KLSE had told the public to wait for the outcome of police investigation as stated in P9 (p 252 of the appeal record), I am of the view that the respondents, being members of the KLSE, were estopped from alleging laches, acquiescence and delay. In relation to this, it was relevant to note the evidence of SP1 (ASP Abd Aziz bin Bulat) at pp 63–64 of the appeal record where he stated that between December 1993 to April 1996, he was leading the team responsible for investigating all matters pertaining to companies, and that there was an investigation regarding Pahang Consolidated Co Bhd now known as PIPLC, and that it did not pertain to forgery of shares and that the investigation was not completed. It would therefore appear that the appellant had been misled into taking no action on his certificates. Therefore I cannot ignore the circumstances leading to the appellant's inaction from 1985 till 1991. The Limitation Act was never pleaded in the defence but it should be noted that even regarding the Limitations Act, one can estop oneself out of the Act. This was decided in *Alfred Templeton & Ors v Low Yat Holdings Sdn Bhd & Anor* [1989] 2 MLJ 202 at pp 244–245, Edgar Joseph Jr J (as he then was) said:

> I must lastly consider whether one can estop oneself out of the Limitation Act. I confess this is a fine point of law which is not free from difficulty. In *Combe v Combe Ltd* [1951] 2 KB 215, Denning LJ (as he then was) enunciated the doctrine of promissory estoppel in these terms:
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> > '... where one party has, by his words or conduct, made to the other a promise or assurance which was intended to affect the legal relations between them and to be acted on accordingly, then, once the other party has taken him at his word and acted on it, the one who gave the promise or assurance cannot afterwards be allowed to revert to the previous legal relations as if no such promise or assurance had been made by him ...'
>
> The language of the learned judge would seem apt to deal with a defendant who, it is alleged, has caused a plaintiff to delay proceedings.
>
> Moreover, the so-called equitable proprietary estoppel has been expanded to create a cause of action. In other words, it can be used not just as a shield but also as a sword. I have, when considering the plaintiffs' claim to a declaration as to entitlement to an equitable easement, referred to an array of cases to illustrate the propositions that rights arising from proprietary estoppel can be given effect to in various ways. I have in mind especially the cases where the court has made orders analogous to specific performance by directing the transfer to the promisee of the property or some other interest in

the property in question. In particular, I have in mind cases such as *Crabb v Arun District Council* [1975] 3 All ER 865, *Duke of Beaufort v Patrick* (1853) 17 Beav 60; 51 ER 954, *Dillwyn v Llewelyn* and *Thomas v Thomas* [1956] NZLR 785 which I have already discussed.

Only six years ago, in *Amalgamated Investment & Property Co Ltd v Texas Commerce International Bank Ltd* [1982] QB 84 Lord Denning emphasized the return to estoppel as a sword when he synthesized the cases and announced that the doctrine of estoppel had become 'overloaded' with cases and that 'the separate developments' of estoppel by representation, promissory and proprietary estoppel could now be seen 'to merge into one general principle shorn of limitations'. That general principle was that where a man by his words or conduct, has led another to believe in a particular state of affairs, he will not be allowed to go back on it when it would be 'unjust or inequitable' for him to do so. Lord Denning's actual words will repay reading and they are as follows:

> 'The doctrine of estoppel is one of the most flexible and useful in the armoury of the law. But it has become overloaded with cases. That is why I have not gone through them all in this judgment. It has evolved during the last 150 years in a sequence of separate developments: proprietary estoppel, estoppel by representation of fact, estoppel by acquiescence, and promissory estoppel. At the same time it has been sought to be limited by a series of maxims: estoppel is only a rule of evidence, estoppel cannot give rise to a cause of action, estoppel cannot do away with the need for consideration, and so forth. All these can now be seen to merge into one general principle shorn of limitations. When the parties to a transaction proceed on the basis of an underlying assumption — either of fact or of law — whether due to misrepresentation or mistake makes no difference — on which they have conducted the dealings between them — neither of them will be allowed to go back on that assumption when it would be unfair or unjust to allow him to do so. If one of them does seek to go back on it, the courts will give the other such remedy as the equity of the case demands.'

In *Kok Hoong v Leong Cheong Kweng Mines Ltd* [1954] AC 993; [1964] MLJ 49, a decision of the Privy Council from the then Federal Court of Malaysia, in a case of moneylenders, their Lordships said:

> '... there are statutes which, though declaring transactions to be unenforceable or void, are nevertheless not absolutely prohibitory and so do not preclude estoppels. One example of this is the Statute of Frauds (see *Humphries v Humphries* (1910) 2 KB 531 (CA) in which it was no doubt considered that ... the statute ought to be treated as regulating procedure, not as striking at essential validity) ... a more direct test to apply ... is to ask whether the law that confronts the estoppel can be seen to represent a social policy to which the court must give effect in the interest of the public generally or some section of the public, despite any rules of evidence as between themselves that the parties may have created by their conduct or otherwise.'

These words are widely drawn and suggest that the Limitation Act can give way to estoppel. Indeed, there are dicta in *Turberville v West Ham Corp* [1950] 2 KB 208 which suggest that a defendant will not be heard to rely on a statute of limitation if his acts or statements during the currency of the period have induced the plaintiff to delay proceedings.

A And, in *Othman & Anor v Mek* [1972] 2 MLJ 158, Ong CJ said:

> '... Statutes of limitation which bar the enforcement of a right by action are rules of procedure only: see 24 *Halsbury's Laws of England* (3rd Ed) p 181. A right which becomes unenforceable merely by reason of limitation does not ipso facto perish or vanish into thin air: see *Holmes v Cowcher* [1970] 1 WLR 835 where it was held that although under s 18(5) of the B Limitation Act 1939, arrears of mortgage interest outstanding for more than six years are irrecoverable by action, the mortgagors were only entitled to the equitable remedy of redemption provided that they paid all arrears of mortgage interest, whether statute-barred or not. If, as in that case, equitable rights did not perish by reason of limitation, can this same defence be set up here to deny the rights of a beneficial owner to be C granted his claim to the legal title?'

So far as may be necessary, I would hold that based on these dicta the Limitation Act is purely procedural: see *Othman & Anor v Mek* and cf *Michell v Harris Engineering Co Ltd* [1967] 2 QB 703. And, therefore, in certain circumstances, one can estop oneself out of the Limitation Act by conduct.

Now, what the circumstances here which could be said to estop the D defendant company out of the Limitation Act? I have referred to these circumstances earlier in a different context, when considering proprietary estoppel generally and, for convenience, would summarize them as follows:

(a) the promises made by Dato Low to the plaintiffs during the negotiations for the sale that the sale was expressly conditional upon the provision of the right of way concerned, upon which the plaintiffs relied and without E which the transaction would never have gone through: see Dato Low's own solicitors' letter exh P6, reproduced above;

(b) clause 11 of the agreement of sale and purchase — reproduced above;

(c) the original lay-out plans for the development of the Mount Pleasure property submitted by the defendant company which provided for a 20 ft F right of way to serve, inter alia, the plaintiffs' lot;

(d) the promises made by Dato Low as managing director of the defendant company to the first plaintiff in early 1980 at the Federal Hotel and at its registered office in Ipoh Road, Kuala Lumpur, to provide a right of way;

(e) it was as late as April 1981 that the defendant company commenced construction work on the basis of a new lay-out plan which, unlike the G original lay-out plan, made no provision for any road access from the plaintiff's lots to the public highway resulting in their being cut off as confirmed in their own solicitors' letter dated 29 July 1981 (exh P6); and

(f) generally, the first plaintiff (who alone shouldered the burden of prosecuting the claim) suffered the disadvantage of residence overseas H and faced a potential adversary of infinitely greater resources but, more importantly, there was the conduct of the parties as reflected in the contemporary correspondence reproduced above.

I would conclude this part of the case by applying the approach adopted by Lord Denning in the *Amalgamated Investment and Property*'s case that when, as here, the defendant company has by its words and conduct led the plaintiffs I to believe that they would be provided a right of way from their lots, which otherwise would be landlocked, it should not be allowed to go back on them when it would be unjust or inequitable for it to do so.

In gist, if the circumstances showed that the defendants had made certain promises on which the plaintiffs had relied, they should not be allowed to breach them. Therefore if the KLSE of which the respondents are members had asked the public including the appellant to wait for the outcome of police investigation, the appellant should not now be penalized. Even though the appellant did not submit his certificates for registration and therefore there was no definite indication of invalidity by the relevant Registrar, he had proved sufficiently that it would have been a futile exercise as firstly, the officers of the company could not be contacted (see p 73 para B of the appeal record), and secondly the patent features of the certificates show that they were not valid certificates and this invalidity was corroborated by the evidence of SP5 and SP7 and by exhs P1 (art 96), P20 and P21 on pp 146, 290–291 of the appeal record. In the result on a preponderance of probabilities, the appellant had proved that the certificates delivered by the respondents were not valid certificates. At paras 20–11, *Palmer's Company Law* (24th Ed, 1987) Vol 1 states:

> Where the articles contain special provisions as to the affixing of the seal, eg that the instrument must also be signed by two directors, those who deal with the company are bound to see that the document on the face of it accords with the articles.

Volume 7(1) of *Halsbury's Laws of England* (Reissue) para 974 states:

> The articles usually make provisions as to the affixing of the seal (footnote 3: see for eg ... Table A, article 101 which provides that the seal is only to be used by the authority of the directors or of a committee of the directors authorised by the directors may determine who shall sign any instrument to which the seal is affixed and, unless otherwise so determined, it must be signed by a director and by the secretary or by a second director) and if these provisions are apparently complied with, the company will be bound as against a person dealing with it in good faith.
>
> ... when a document under seal is necessary, the person contracting with the company is bound to look at the memorandum and articles to see whether the document on the face of it appears to be executed in the required manner ...

I am of the opinion that the evidence before the court as adduced by the appellant clearly showed that there were enough pointers on the face of the certificates to show that they did not accord with the M & A of PIPLC and that the respondents did not discharge their duty of care as stockbrokers when they accepted the certificates and delivered them to the appellant. The loss and damage suffered by the appellant was solely caused by the negligence of the respondents. Even though the company was wound up on 23 October 1987 as stated by SP2 at p 65, para A of the appeal record, the fact remained that the appellant's loss was caused not by the winding-up but by the fact that the certificates were invalid at the point in time when they were delivered to him. Exhibit P21 (p 291 of the appeal record) an extract from the *1985 KLSE Handbook* mentions that the PIPLC was listed in the Malaysian and Singapore Stock Exchanges with its respective local Registrars dealing with share registration. Although it was listed in different

countries, it was in fact one company with one set of M & A. If certificates were issued in Singapore, this did not mean that there must be a different company with a different M & A in Singapore. This was corroborated by, for instance, the fact although the company was listed in both countries (Malaysia and Singapore), the directors and other officers of the company (secretaries, auditors) listed in P21 were the same persons. The M & A would be the same. And even the Singapore laws on the details which must be stated on a share certificate and the procedures for affixing the seal were the same as in Malaysia. Therefore the fact that the certificates in question were registered in Singapore did not affect the relevancy of the appellant's arguments.

The learned sessions court judge erred in law for the following reasons. The totality of the evidence called by the appellant and the documents adduced showed that the appellant had discharged his burden of proof and that there were very glaring irregularities in the certificates together with the KLSE's press statement which showed that there was a very strong likelihood that the share certificates were not valid. In the face of the unchallenged evidence that the company, its directors, Registrars and offices could not be traced, a fact supported by the KLSE's own press statement dated 7 September 1987 (exh P8) the learned judge was totally unjustified in drawing an adverse inference against the appellant for not calling the Singapore Registrar. The learned judge overlooked the fact that the appellant did not call SP5 as an expert but as an informed, knowledgeable person who had perused millions of the company certificates as President of MIA, who was a member of the Board of the Company's Liquidator in Malaysia and who had been briefed by the Singapore Commercial Affairs Department officers on the irregularities of the certificates. The learned judge abdicated in her duty to come to her own conclusion based on the evidence before her which were overwhelming in pointing to invalidity of the certificates and that she had sufficient guidance from the company's art 96 (exh P1) and ss 100, 158 and 164 of the Act without having to rely on the verification of the Registrar of Company, especially as evidence showed it was impossible to get such verification from the Registrar of Company. In *Saw Seng Kee v Nadzri & Ng Securities Sdn Bhd* [1996] 2 MLJ 238 at p 248, the Court of Appeal said:

> In the present case the plaintiff was effectively contending that the brokers were not entitled to assume that the board of directors of PIPLC had authorized the issue of these shares because they did not even carry the signatures of any director or secretary of the company. The seal of the company was not attested. As for the change in name, the point was that the brokers should have been put on alert when they saw that the share certificates were purportedly issued in 1985 in the name of Pahang Consolidated, which was no longer a legal way of describing the company since that name was dropped on 15 October 1984.

The respondents as stockbrokers profess to have special skills in the purchase and sale of stocks and shares. It is expected that stockbrokers will exercise reasonable care and skill in the conduct of their business. In their business they are bound to handle hundreds of thousands of share

certificates. However, they are expected to be familiar with the provisions of the relevant provisions of the relevant laws pertaining to any particular certificates which come into their hands. In the instant case, the certificates purported to be registered in Singapore. They should know what the Singapore law said on these certificates. In fact, the Singapore law on this was similar to the Malaysian law. Yet the respondents did not discharge their duty of care which they owed to the appellant although they had been put on notice of the patent irregularity of the certificates, bearing in mind art 96 of PIPLC (exh P1 at p 146 of the appeal record). Although P1 had the name 'The Pahang Consolidated Co Bhd', it was still the relevant M & A because this was confirmed by the government witnesses SP2 (ROC officer) and SP3 (official liquidator). SP2's evidence is at pp 64–65 of the appeal record. Although he said that if the shares were issued in Singapore, the M & A in Malaysia (P1) cannot be used, under re-examination, he said that he did not know if there was an M & A for Singapore shares. When SP2 referred to issue of shares in Singapore he meant issue of certificates and that he was wrong when he said P1 could not be used for certificates issued in Singapore. This was because he obviously had forgotten about s 164 of the Act and that there was only one company (as shown by exhs P20 and P21 at pp 290–291 of the appeal record) with Registrar's offices in Singapore and Malaysia and only one head office ie in Kuala Lumpur and that therefore there was only one M & A (P1) applicable whether the shares were in the Singapore register or the Malaysian register. SP3 confirmed that P1 was similar to the M & A in her file on the company (see p 66, paras B–C of the appeal record). According to her, this M & A was prepared by the solicitors, Nik Hussain, Ibrahim Tan & Abdullah, and that the company was wound up on 23 October 1987 and that the company's winding up number was D2–42–152–87 (see p 67, para B of the appeal record). *Charlesworth on Negligence* (5th Ed) p 162 stated:

> Care and skill. Where special skill is required for the work to be done, a reasonable man would not be expected to attempt it unless he is capable of performing it by possessing such special skill, in which event he is bound to exercise the skill and competence of an ordinarily competent practitioner in that profession. Every person who enters into a learned profession undertakes to bring to the exercise of it a reasonable degree of care and skill. He does not undertake, if he is an attorney, that at all events you shall gain your case, nor does a surgeon undertake that he will perform a cure; nor does he undertake to sue the highest possible degree of skill. They may be persons who have higher education and greater advantages than he has, but he undertakes to bring a fair, reasonable and competent degree of skill.
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> The same rule applies to any man exercising a skilled trade or business. 'If a smith prick my house with a nail, etc, I shall have my action upon the case against him, without any warranty by the smith to do it well ... for it is the duty of every artificer to exercise his art rightly and truly as he ought.
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> In *Bolam v Friern Hospital Management Committee* [1957] 2 All ER 118; [1957] 1 WLR 582, McNair J said: 'Where you get a situation which involves the use of some special skill or competence, then the test as to whether there has been negligence or not is not the test of the man on the top of a Clapham omnibus, because he has not got this special skill. The test is the standard of

A the ordinary skilled man exercising and professing to have that special skill .... A man need not possess the highest expert skill; it is well established law that is sufficient if he exercises the ordinary skill of an ordinary competent man exercising that particular art.

It follows that an action for negligence will lie for damage caused by the failure to exercise due care and skill by proving either that the defendant did B not possess the requisite skill or by showing that, although he possessed it, he did not exercise it in the particular case.

And further at p 163 stated:

Reasonable skill includes a practical working knowledge of the law relating to the calling in question.

C This duty to exercise reasonable care and skill is applicable to everyone practising a calling involving personal skill, such as: accountants and auditors, agents, architect, engineers and surveyors, auctioneers, barristers (when engaged on non-litigious matters), dentists, directors of companies, divers, nurses, patent agents, physicians and surgeons, solicitors, stockbrokers, insurance brokers, valuers and veterinary practitioners.

D With reference to stockbrokers, *Charlesworth on Negligence* refers to the case of *Neilson v James* (1882) 9 QBD 546. Here the stockbrokers made a contract for sale of shares in a joint stock bank on behalf of the plaintiff which turned out to be invalid because it did not follow the custom of the stock exchange and so when the bank was wound up the plaintiff remained E a holder of the shares. It was held that the stockbroker had committed a breach of duty in not making a valid contract for sale and for such breach, the plaintiff was entitled to recover from the stockbroker by way of damages the price at which the shares had been sold.

On liability of stockbrokers, *Charlesworth on Negligence* said at p 213 F 'Stockbrokers are liable for failing to use that skill and diligence which a reasonably competent and careful stockbroker would exercise.'

In *Modern Law of Negligence* (1988), Buckley at p 302 said:

... Liability will be easier to establish if a broker carelessly gives advice based upon misleading factual information' quoting *Elderkin v Merrill Lynch Royal* G *Securities Ltd* (1977) 80 DLR (3d) 313.

In *Elderkin*'s case the headnote states:

In addition, quite apart from a duty arising out of the fiduciary relationship, the stockbroker, as a person possessed of special skill, owes a duty of reasonable care to his clients. Where the stockbroker is negligent in the advice H or information he gives or fails to give his clients, thereby causing them to acquire and to continue to hold the stock in the company, he is liable to them for the loss they suffer when the company collapses and the shares become worthless.

In the appellant's case, turning to the facts of the case, I am of the opinion that the respondents were negligent not only in delivering the certificates I which were patently irregular but also in failing to inform the appellant of the irregularities thereby causing him to continue to hold the shares. An by the time he found out about the invalidity, the company had been wound

up and it was impossible for him to sell the shares. His loss was caused by the respondents' negligence and must be made good by the respondents. Under s 165 of the Contracts Act 1950 an agent is bound to conduct his business with as much skill as is generally possessed by persons engaged in similar business unless the principal has notice of his want of skill and he is always bound to act with reasonable diligence and to use such skill as he possesses. When the appellant adduced evidence from SP5 and SP7 and in the form of various exhibits particularly P1, P21, P16 and P17, the appellant had proved on a preponderance of probabilities that the respondents had not been reasonably diligent. The respondents called no evidence to show a standard of comparison ie where it is necessary to decide whether a person's conduct meets some objective standard of behaviour, evidence of what other persons would do in the same circumstances is admissible as a standard of comparison (see *Modern Law of Evidence* by Adrian Keane (2nd Ed, 1989) p 14). In *Neogh Soo Oh & Ors v G Rethinasamy* [1984] 1 MLJ 126 at p 127:

> Mr Lim Kean Chye, counsel for the defendant, stated that the question for the court to decide in this case was what would be the standard of skill required from the defendant. He submitted that it would be 'the reasonable care and skill to be expected from a normally competent and careful practitioner' (*Midland Bank Trust Co Ltd & Anor v Hett, Stubbs and Kemp* [1978] 3 All ER 571; *Chin Keow v Govt of Malaysia & Anor* [1967] 2 MLJ 45 and that the extent of the legal duty of a lawyer like the defendant would be a question for the court to decide. He also submitted that in non-contentious matters it was the solicitor's duty to carry them out according to the regular method prescribed by statute, rule or custom. (36 *Halsbury's Laws of England* (3rd Ed) p 102 para 138). After referring to the following para in *Phipson on Evidence* (12th Ed) on 'Standard of Comparison':
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> '314 On questions involving negligence, reasonableness, and other qualities of conduct, when the criterion to be adopted is not clear, the acts or precautions proper to be taken under the circumstances, and even the general practice of the community, or in some cases of the particular individuals, are admissible as affording a measure by which the conduct in question may be gauged. Such evidence does not, of course, bind the jury as a fixed legal standard; it is merely one, amongst other circumstances, by which they may be guided. To do an act in a customary manner does not, then, necessarily render it justifiable, nor will abstention from a voluntary custom render a party liable for negligence, unless he has expressly or impliedly invited the injured person to rely on such custom.'
>
> Counsel then commented on the evidence of the three plaintiff witnesses who were lawyers in practice.

In the instant case, the respondents breached the KLSE Rules contained in P19A, r 7 on 'good delivery' (p 264 of the appeal record) when they delivered invalid certificates to the appellant. Under this Rule, 'valid certificates and transfers ... shall constitute good delivery'. SP6 gave evidence that the relevant KLSE Rules in 1985 are those at pp 264–187 of the appeal record (see p 117, paras B–C of the appeal record). He confirmed P19 is correct. P19 (p 263 of the appeal record) is a letter dated

15 November 1991 from the KLSE to the appellant's solicitors which refers to Rules 7, 8, 9, 19 and 11 of the KLSE Rules for Trading by Member Firms and Member Companies and states that Appendix A showed the said Rules which were in effect from 7 February 1990 and Appendix B showed the said Rules which were in effect before 7 February 1990. Appendix B was marked P19A (see p 264 of the appeal record) and Appendix A was marked P19B (see p 288 of the appeal record). I am satisfied that the appellant had adequately discharged his burden of proof by showing proof on a preponderance of probabilities and that there was a breach of duty of care and skill on the part of the respondents. Indeed, to hold them not liable in the circumstances adduced before the court would be to set a dangerous precedent in the stock and share market where members of the public ordinarily rely on stockbrokers to handle the bulk of transactions on their behalf. On his claim, the appellant concedes that there were in fact seven valid certificates delivered by the respondents ie certificates P6(1), P6(3), P6(5), P7(7), P6(9), P6(11) and P6(13) as shown at pp 152, 154, 156, 158, 160, 162, 164 of the appeal record (Malaysian Register certificates) and he therefore had excluded the price of these certificates from his claim.

For these reasons the plaintiff's appeal is allowed with costs here and below and the sum claimed, ie RM28,720.40 together with costs and interest at 8% as prayed under s 11 of the Civil Law Act 1956 from the date the cause of action arose ie 25 October 1985 till date of payment is allowed.

Appeal allowed.

Reported by Jafisah Jaafar